

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner.

Upon entry of the instant Amendment, Claims 1, 2, and 4-20 will be all of the claims presently pending before the Examiner. Instantly, Claim 1 is amended and Claims 15-20 are newly added claims.

Newly added Claims 15-20 are directed to diesters, namely, enantiomerically enriched polyethylene glycol diesters of R-(+)-2-(4-chloro-2-methylphenoxy)-propionic acid and processes of producing the same. The diesters of the new claims are neither taught nor suggested in the cited references and, therefore, should be immediately allowed.

Applicants respectfully submit no new matter has been added by the present amendments. Support for the amendments can be found generally throughout the Applicants' disclosure. It should also be noted that this Amendment is not in acquiescence of the Office's position on the allowability of the claims but made merely to expedite prosecution.

The Office is, therefore, respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the following remarks.

I. Claim Rejections

A. 35 U.S.C. 103(a) Rejections

Claims 1, 2, and 4-14 presently stand rejected under 35 U.S.C. 103(a) as being obvious over Heuer et al. WO 95/06408, as evidenced by the corresponding English language U.S. patent, Heuer et al. USPN 5,672,568 (hereinafter "Heuer") in view of the reference Swedish J. Agric., 1973, entitled, "Plant Growth Regulators" by Börje Aberg (hereinafter "Aberg"). Applicants respectfully disagree.

As best understood, Heuer relates to the use of specific esters of 2-(4-chloro-2-methylphenoxy)-propionic acid ("MCPP ester"). Heuer fails to recognize any enantiomers associated with the disclosed MCPP esters.

As best understood, Aberg relates to MCPP acids, but does not relate to MCPP esters. Aberg provides that in herbicidal applications the R-(+)-MCPP-acid isomer is more effective than the S-(-)-MCPP-acid isomer.

The Office opines that the skilled artisan would combine the teachings of Aberg with Heuer to arrive at the claimed invention. Such an assertion, however, fails to properly consider the fact that Aberg relates only to carboxylic acids, while Heuer relates to esters. The skilled artisan will appreciate the fact that different properties are associated with carboxylic acid compounds as compared with those properties associated with ester compounds. Thus, one skilled in the art would not have expected the Aberg teachings regarding a carboxylic acid to apply to the Heuer teachings regarding an ester and, therefore, would not have made the combination as provided by the Office. In other words, since Aberg and Heuer clearly relate to different compounds, their combination would have not have been obvious.

In light of the above, Applicants request the withdrawal of the present obviousness rejections.

C. Double Patenting Rejection

Claims 1, 2, and 4-14 are rejected on grounds of non-statutory obviousness type double patenting over Claims 1-14 of Heuer et al. USPN 5,675,032 (hereinafter '032").

Applicants must again respectfully disagree with the Examiner's finding and request the reconsideration thereof. As indicated previously, the '032 patent relates to the production of polyethylene glycol esters of MCPP-acids. However, the '032 reference fails to disclose the enantiomeric relationship of the polyethylene glycol esters

of MCPP-acids. Since the presently claimed invention is clearly drawn to enantiomerically enriched polyethylene glycol esters of R-(+)-MCPP-acids, the claims of the '032 cannot render the same obvious and, therefore, said claims cannot serve as a proper obvious-type double patenting rejection.

Applicants request the withdrawal of these rejections at this time.

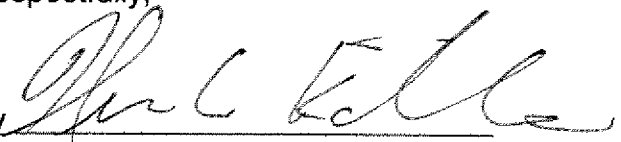
II. Conclusion

In view of the foregoing, it is respectfully submitted that independent claims 1 and 15 are fully distinguishable over the applied art and are thus in condition for allowance. By virtue of dependence from what is believed to be allowable independent claims 1 and 15, it is respectfully submitted the remaining claims are also presently allowable. Notice to the effect is earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

The USPTO is hereby authorized to charge any fees, including any fees for an extension of time or those under 37 CFR 1.16 or 1.17, which may be required by this paper, and/or to credit any overpayments to Deposit Account No. 50-2527.

Respectfully,

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